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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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**HOUSE BILL**

**No. 55**

Session of  
1997

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INTRODUCED BY BOYES, TRELLO, KENNEY, TIGUE, ITKIN, BROWNE,  
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GODSHALL, OLASZ, TRAVAGLIO, MUNDY, MELIO, WOJNAROSKI,  
C. WILLIAMS AND GIGLIOTTI, JANUARY 28, 1997

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REFERRED TO COMMITTEE ON FINANCE, JANUARY 28, 1997

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AN ACT

1 Providing for the tax exemption of institutions of purely public  
2 charity; exempting real property owned by State-related  
3 universities from taxation; and providing for unfair  
4 competition.

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2 The General Assembly of the Commonwealth of Pennsylvania  
3 hereby enacts as follows:

4 Section 1. Short title.

5 This act shall be known and may be cited as the Institutions  
6 of Purely Public Charity Act.

7 Section 2. Legislative intent.

8 (a) Findings.--The General Assembly finds and declares as  
9 follows:

10 (1) It is in the best interest of this Commonwealth and  
11 its citizens that the recognition of tax-exempt status be  
12 accomplished in an orderly, uniform and economical manner.

13 (2) For more than 100 years, it has been the policy of  
14 this Commonwealth to foster the organization and operation of  
15 charitable organizations by exempting charitable  
16 organizations from taxation.

17 (3) Because charitable organizations contribute to the  
18 common good or lessen the burdens of government, the historic  
19 policy of exempting charitable institutions from taxation  
20 should be continued.

21 (4) The General Assembly recognizes that it is  
22 unrealistic today to expect charitable organizations to rely  
23 completely upon private philanthropy and that there is an  
24 appropriate role and responsibility for government support  
25 with respect to activities historically recognized as  
26 charitable.

27 (5) The General Assembly recognizes that the lack of  
28 specific legislative standards defining the term  
29 "institutions of purely public charity" has led to increasing  
30 confusion and confrontation among traditionally tax-exempt

1 organizations and local governments to the detriment of the  
2 public.

3 (6) There is increasing concern that the eligibility  
4 standards for charitable tax exemptions are being applied  
5 inconsistently, which may violate the uniformity provision of  
6 the Constitution of Pennsylvania.

7 (b) Intent.--It is the intent of the General Assembly to  
8 eliminate inconsistent application of eligibility standards for  
9 charitable tax exemptions, reduce confusion and confrontation  
10 among traditionally tax-exempt organizations and local  
11 governments and insure that charitable and public funds are not  
12 unnecessarily diverted from the public good to litigate  
13 eligibility for tax-exempt status by providing standards to be  
14 applied uniformly in all proceedings throughout this  
15 Commonwealth for determining eligibility for exemption from  
16 State and local taxation which are consistent with traditional  
17 legislative and judicial applications of the constitutional term  
18 "institutions of purely public charity."  
19 Section 3. State-related universities.

20 (a) General rule.--It is the intent of the General Assembly  
21 to recognize that the State-related universities provide a  
22 direct public benefit and serve the public purposes of this  
23 Commonwealth by declaring the real property of State-related  
24 universities to be public property for purposes of exemption  
25 from State and local taxation when the property is actually and  
26 regularly used for public purposes, provided that nothing in  
27 this section is intended or shall be construed to affect the  
28 title to real property of State-related universities or the  
29 power and authority of the governing bodies of State-related  
30 universities with respect to such real property. Further,

1 nothing in this section is intended or shall be construed to  
2 affect, impair or terminate any contract or agreement in effect  
3 on or before the effective date of this act by and between a  
4 State-related university and any county, city, borough, township  
5 or school district wherein the State-related university pays  
6 real estate taxes, amounts in lieu of real estate taxes or other  
7 charges, fees or contributions for municipal services.

8 (b) Real property.--All real property owned by State-related  
9 universities, or owned by the Commonwealth and used by a State-  
10 related university, is and shall be deemed public property for  
11 purposes of the Constitution of Pennsylvania and the laws of  
12 this Commonwealth relating to the assessment, taxation and  
13 exemption of real estate and shall be exempt from all State and  
14 local taxation when actually and regularly used for public  
15 purposes.

16 (c) Exemption.--This section shall not include the property  
17 of a State-related university the possession and control of  
18 which has been transferred to a for-profit entity not otherwise  
19 entitled to tax-exempt status, irrespective of whether that  
20 entity is affiliated with the university. The execution of a  
21 management services contract with a third party entity to  
22 provide operational services to the university which would  
23 otherwise be provided or conducted directly by the university  
24 shall not, however, be considered a transfer of possession and  
25 control of real property within the meaning of this section.

26 (d) Definitions.--As used in this section, the following  
27 words and phrases shall have the meanings given to them in this  
28 subsection:

29 "Public purposes." All activities relating to the  
30 educational mission of State-related universities, including,

1 without limitation, teaching, research, service and activities  
2 incident or ancillary thereto which provide services to or for  
3 students, employees or the public.

4 "State-related universities." The Pennsylvania State  
5 University and its affiliate, the Pennsylvania College of  
6 Technology, the University of Pittsburgh, Temple University and  
7 its subsidiaries Temple University Hospital, Inc., and Temple  
8 University Children's Hospital, Inc., and Lincoln University.

9 Section 4. Definitions.

10 The following words and phrases when used in this act shall  
11 have the meanings given to them in this section unless the  
12 context clearly indicates otherwise:

13 "Commercial business." The sale of products or services that  
14 are principally the same as those offered by an existing small  
15 business in the same community.

16 "Goods or services." Goods or services which promote any of  
17 the six enumerated purposes under section 5(b) and which are  
18 valued in accordance with generally accepted accounting  
19 principles applicable to the institution. If the institution's  
20 purpose is to provide health care services, the term shall  
21 include, but not be limited to, medically necessary goods or  
22 services in life-threatening situations.

23 "Government agency." Any Commonwealth agency or any  
24 political subdivision or municipal or other local authority or  
25 any officer or agency of any political subdivision or local  
26 authority.

27 "Institution of purely public charity." A domestic or  
28 foreign nonprofit corporation, association, trust or other  
29 organization which meets the criteria under section 5.

30 "Net operating income." The amount of funds remaining after

1 deducting all operating expenses related to the provision of  
2 goods or services associated with the institution's charitable  
3 purpose from payments received from providing these goods or  
4 services, as determined in accordance with the generally  
5 accepted accounting principles applicable to the institution.

6 "Small business." Any self-employed individual, sole  
7 proprietorship, firm, corporation, partnership, association or  
8 other entity that:

9 (1) has fewer than 101 full-time employees; and

10 (2) is subject to income taxation under the act of March  
11 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971.

12 "Tax Reform Code." The act of March 4, 1971 (P.L.6, No.2),  
13 known as the Tax Reform Code of 1971.

14 "Total operating expenses." The costs related to the  
15 provision of goods or services associated with the institution's  
16 charitable purpose, as determined in accordance with generally  
17 accepted accounting principles applicable to the institution.

18 Section 5. Criteria.

19 (a) General rule.--An institution of purely public charity  
20 is a nonprofit corporation, association, trust or other  
21 organization which meets the criteria set forth in this section.  
22 A nonprofit corporation, together with its subsidiary nonprofit  
23 corporations of which it is the only member or only shareholder,  
24 may elect to be considered as a single institution in meeting  
25 the criteria set forth in this section. An institution of purely  
26 public charity shall meet all of the criteria contained in  
27 subsections (b), (c), (d), (e) and (f). Institutions of purely  
28 public charity which meet the criteria specified in this section  
29 shall be considered to be founded, endowed and maintained by  
30 public or private charity.

1 (b) Charitable purpose.--The institution shall advance a  
2 charitable purpose. This criterion is satisfied if the  
3 institution is organized and operated primarily to fulfill any  
4 one or combination of the following purposes:

5 (1) Relief of poverty.

6 (2) Advancement of education, including, but not limited  
7 to, postsecondary education.

8 (3) Advancement of religion.

9 (4) Prevention and treatment of disease or injury.

10 (5) Government or municipal purposes.

11 (6) Accomplishment of any purpose which is beneficial to  
12 the community, including, but not limited to, advancement of  
13 the arts and sciences, advancement of the cultural,  
14 spiritual, mental, physical, social or emotional welfare or  
15 improvement of others.

16 (c) Private profit motive.--The institution shall operate  
17 entirely free from private profit motive. Compensation,  
18 including benefits of any director, officer or employee, shall  
19 not be based primarily upon the financial performance of the  
20 organization. Notwithstanding whether the institution's revenues  
21 exceed its expenses, this criterion is satisfied if the  
22 institution meets the following:

23 (1) Neither the institution's net earnings nor donations  
24 which it receives inures to the benefit of private  
25 shareholders or other individuals, as the private inurement  
26 standard is interpreted under section 501(c)(3) of the  
27 Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. §  
28 501(c)(3)). The purchase of tangible or intangible assets,  
29 including professional practices for fair market value, shall  
30 not, by itself, be construed to constitute evidence of

1 operation for a private profit motive.

2 (2) The institution applies or reserves any revenue in  
3 excess of expenses in furtherance of its charitable purpose  
4 or to funding of other charitable organizations which meet  
5 the provisions of this subsection.

6 (d) Community service.--

7 (1) The institution shall donate or render gratuitously  
8 a substantial portion of its services. This criterion is  
9 satisfied if the institution benefits the community by  
10 actually providing any of the following:

11 (i) Goods or services to all who seek them without  
12 regard to their ability to pay for what they receive if  
13 all of the following apply:

14 (A) The institution has a written policy to this  
15 effect.

16 (B) The institution has published this policy in  
17 a reasonable manner.

18 (C) The institution provides uncompensated goods  
19 or services at least equal to 75% of the  
20 institution's net operating income but not less than  
21 3% of the institution's total operating expenses.

22 (ii) Goods or services for fees that are based upon  
23 the recipient's ability to pay for them if all of the  
24 following apply:

25 (A) The institution can demonstrate that it has  
26 implemented a written policy and a written schedule  
27 of fees based on individual or family income. An  
28 institution will meet the requirement of this clause  
29 if the institution consistently applies a formula to  
30 all individuals requesting consideration of reduced



1 fees which is in part based on individual or family  
2 income.

3 (B) At least 20% of the individuals receiving  
4 goods or services from the institution pay no fee or  
5 a fee which is lower than the cost of the goods or  
6 services provided by the institution.

7 (C) At least 10% of the individuals receiving  
8 goods or services from the institution receive a  
9 reduction in fees of at least 10% of the cost of the  
10 goods or services provided to them.

11 (D) No individual receiving goods or services  
12 from the institution pays a fee which is equal to or  
13 greater than the cost of the goods or services  
14 provided to them, or the goods or services provided  
15 to the individuals described in clause (B) are  
16 comparable to the goods or services provided to those  
17 individuals who pay a fee which is equal to or  
18 greater than the cost of the goods or services  
19 provided to them.

20 (iii) Wholly gratuitous goods or services to at  
21 least 5% of those receiving similar goods or services  
22 from the institution.

23 (iv) Financial assistance or uncompensated goods or  
24 services to at least 20% of those receiving similar goods  
25 or services from the institution if at least 10% of the  
26 individuals receiving goods or services from the  
27 institution either paid no fees or fees which were 90% or  
28 less of the cost of the goods or services provided to  
29 them, after consideration of any financial assistance  
30 provided to them by the institution.

1 (v) Uncompensated goods or services which, in the  
2 aggregate, are equal to at least 5% of the institution's  
3 costs of providing goods or services.

4 (vi) Goods or services at no fee or reduced fees to  
5 government agencies or goods or services to individuals  
6 eligible for government programs if one of the following  
7 applies:

8 (A) The institution receives 75% or more of its  
9 gross operating revenue from grants or fee-for-  
10 service payments by government agencies and if the  
11 aggregate amount of fee-for-service payments from  
12 government agencies does not exceed 95% of the  
13 institution's costs of providing goods or services to  
14 the individuals for whom the fee-for-services  
15 payments are made.

16 (B) The institution provides goods or services  
17 to individuals with mental retardation, to  
18 individuals who need mental health services, to  
19 members of an individual's family or guardian in  
20 support of such goods or services or to individuals  
21 who are dependent, neglected or delinquent children,  
22 as long as the institution performs duties that would  
23 otherwise be the responsibility of government and the  
24 institution is restricted in its ability to retain  
25 revenue over expenses or voluntary contributions by  
26 any one of the following statutes or regulations or  
27 by contractual limitations with county children and  
28 youth offices in this Commonwealth:

29 (I) Sections 1315(c) and 1905(d) of the  
30 Social Security Act (49 Stat. 620, 42 U.S.C. §§

1 1396d(d) and 1396n(c)).

2 (II) 42 CFR 440.150 (relating to  
3 intermediate care facility (ICF/MR) services.

4 (III) 42 CFR Pt. 483 Subpt. I (relating to  
5 conditions of participation for intermediate care  
6 facilities for the mentally retarded).

7 (IV) The act of October 20, 1966 (3rd  
8 Sp.Sess., P.L.96, No.6), known as the Mental  
9 Health and Mental Retardation Act of 1966.

10 (V) Articles II, VII, IX and X of the act of  
11 June 13, 1967 (P.L.31, No.21), known as the  
12 Public Welfare Code.

13 (VI) 23 Pa.C.S. Ch. 63 (relating to child  
14 protective services).

15 (VII) 42 Pa.C.S. Ch. 63 (relating to  
16 juvenile matters).

17 (VIII) 55 Pa. Code Chs. 3170 (relating to  
18 allowable costs and procedures for county  
19 children and youth), 3680 (relating to  
20 administration and operation of a children and  
21 youth social service agency) 4300 (relating to  
22 county mental health and mental retardation  
23 fiscal manual), 6400 (relating to community homes  
24 for individuals with mental retardation), 6500  
25 (relating to family living homes), 6210 (relating  
26 to participation requirements for the  
27 intermediate care facilities for the mentally  
28 retarded program), 6211 (relating to allowable  
29 cost reimbursement for non-State operated  
30 intermediate care facilities for the mentally

1                   retarded) and 6600 (relating to intermediate care  
2                   facilities for the mentally retarded).

3                   (vii) Funds to corporations, associations, trusts or  
4                   other organizations which meet the criteria of this  
5                   section, funds to government agencies or funds to  
6                   organizations which qualify under section 501(c)(3) of  
7                   the Internal Revenue Code of 1986 (Public Law 99-514, 26  
8                   U.S.C. § 501(c)(3)), if the institution providing the  
9                   funds is primarily engaged in fundraising on behalf of or  
10                  making grants to such corporations, associations, trusts,  
11                  such government agencies or such organizations.

12                  (2) The institution may elect to average the applicable  
13                  data for the five most recently completed fiscal years for  
14                  the purposes of calculating any formula or meeting any  
15                  quantitative standard in paragraph (1).

16                  (3) An institution that does not satisfy the provisions  
17                  of paragraph (1)(i) through (vii) may meet this criterion by  
18                  demonstrating that it donates or renders gratuitously a  
19                  substantial portion of its goods or services.

20                  (4) For the purposes of calculating the number of  
21                  individuals for use in the percentage calculations in this  
22                  subsection, educational institutions may use full time  
23                  equivalent students as defined by the Department of  
24                  Education.

25                  (5) As used in this subsection, the term "uncompensated  
26                  goods or services" shall include all benefits provided to the  
27                  community the institution serves, including, but not limited  
28                  to, the following:

29                          (i) The full cost of all goods or services provided  
30                          by the institution for which the institution has not

1 received monetary compensation or the difference between  
2 the full cost and any lesser fee received for the goods  
3 or services, including the cost of the goods or services  
4 provided to individuals unable to pay.

5 (ii) The difference between the full cost of  
6 education and research programs provided by or  
7 participated in by the institution and the payment made  
8 to the institution to support the education and research  
9 programs.

10 (iii) The difference between the full cost of  
11 providing the goods or services and the payment made to  
12 the institution under any government program, including  
13 individuals covered by Medicare or Medicaid.

14 (iv) The difference between the full cost of the  
15 community services which the institution provides or  
16 participates in and the payment made to the institution  
17 to support such community services.

18 (v) The reasonable value of any moneys, property,  
19 goods or services donated by the primary donor to another  
20 institution of purely public charity or to a government  
21 agency or the reasonable value of the net donation made  
22 by a secondary donor to a primary donor. As used in this  
23 subparagraph, the following words and phrases shall have  
24 the following meanings:

25 "Net donation." In the case of a donation of money,  
26 property or identical goods and services made by a  
27 secondary donor, the difference between the value of the  
28 donation made by the secondary donor and the value of the  
29 donation made by the primary donor, provided such value  
30 is positive.

1           "Primary donor." An institution which makes a  
2 donation of any money, property, goods or services to  
3 another institution of purely public charity.

4           "Secondary donor." An institution which receives a  
5 donation of any money, property, goods or services from a  
6 primary donor and then makes a donation back to that  
7 primary donor within three years of having received such  
8 donation.

9           (vi) The reasonable value of volunteer assistance  
10 donated by individuals to the institution. The reasonable  
11 value of volunteer assistance, computed on an hourly  
12 basis, shall not exceed the "Statewide average weekly  
13 wage" as defined in section 105.1 of the act of June 2,  
14 1915 (P.L.736, No.338), known as the Workers'  
15 Compensation Act divided by 40.

16           (vii) The cost of goods or services by charitable  
17 health care facilities licensed by the Department of  
18 Health or the Department of Public Welfare, which are bad  
19 debts, as determined in accordance with the generally  
20 accepted accounting principles applicable to the  
21 institution.

22 (e) Charity to persons.--

23           (1) The institution shall benefit a substantial and  
24 indefinite class of persons who are legitimate subjects of  
25 charity.

26           (2) As used in this subsection, the following words and  
27 phrases shall have the meanings given to them in this  
28 paragraph:

29           "Legitimate subjects of charity." Those individuals who  
30 are unable to provide themselves with what the institution

1 provides for them.

2 "Substantial and indefinite class of persons." Persons  
3 not predetermined in number, provided that, where the goods  
4 or services are received primarily by members of the  
5 institution, membership cannot be predetermined in number and  
6 cannot be arbitrarily denied by a vote of the existing  
7 members. This section specifically recognizes that the use of  
8 admissions criteria and enrollment limitations by educational  
9 institutions do not constitute predetermined membership or  
10 arbitrary restrictions on membership so as to violate this  
11 section and recognizes that an institution may reasonably  
12 deny membership based on the types of services it provides,  
13 as long as denial is not in violation of Federal or State  
14 antidiscrimination laws, such as the Civil Rights Act of 1964  
15 (Public Law 88-352, 78 Stat. 241) and the act of October 27,  
16 1955 (P.L.744, No.222), known as the Pennsylvania Human  
17 Relations Act.

18 (3) An institution shall be considered to benefit a  
19 substantial and indefinite class of persons who are  
20 legitimate subjects of charity if the institution is  
21 primarily engaged in fundraising on behalf of or making  
22 grants to:

23 (i) corporations, associations, trusts or other  
24 organizations which meet the criteria set forth in this  
25 section;

26 (ii) government agencies; or

27 (iii) organizations which qualify under section  
28 501(c)(3) of the Internal Revenue Code of 1986 (Public  
29 Law 99-514, 26 U.S.C. § 501(c)(3)).

30 (f) Government service.--The institution shall relieve the

1 government of some of its burden. This criterion is satisfied if  
2 the institution meets any of the following:

3 (1) provides a service to the public that the government  
4 would otherwise be obliged to fund or to provide directly or  
5 indirectly or assure that a similar organization exists to  
6 provide the service;

7 (2) provides services in furtherance of its charitable  
8 purpose which are either the responsibility of the government  
9 by law or which historically have been assumed or offered or  
10 funded by the government;

11 (3) receives on a regular basis payments for services  
12 rendered under a government program if the payments are less  
13 than the full costs incurred by the institution for the  
14 rendering of the services or if the institution can  
15 demonstrate that comparable services are more expensive when  
16 provided by the government; or

17 (4) provides a service which advances important  
18 community, public, spiritual, mental, physical, educational,  
19 emotional, civic, historical or cultural objectives.

20 (g) Standards.--Nothing contained in this act shall be  
21 deemed to prohibit a charitable organization from conducting  
22 activities intended to influence legislation. Nothing in this  
23 act shall prohibit a political subdivision from filing  
24 challenges to or making determinations as to whether a  
25 particular parcel of property is being used to advance the  
26 charitable purpose of an institution of purely public charity.  
27 No additional criteria shall be imposed on any organization in  
28 order to be recognized as an institution of purely public  
29 charity.

30 Section 6. Multiple jurisdictions.



1 (a) Intent.--It is the intent of the General Assembly to  
2 foster uniformity in the application of the standards contained  
3 within this act for determining status as an institution of  
4 purely public charity. The General Assembly recognizes that  
5 multiple jurisdictions at different levels of government will be  
6 required to determine whether an organization requesting tax  
7 exemption meets such standards. Because many organizations will  
8 be required to seek and receive approval from different  
9 governmental entities, the General Assembly believes that an  
10 organization which demonstrates compliance with the standards at  
11 the State level shall be entitled to a rebuttable presumption  
12 that it has met those standards when determining qualification  
13 for local property tax exemptions. Such a presumption is not  
14 intended to in any way limit or preclude the ability of a local  
15 taxing jurisdiction to challenge a tax exemption based on the  
16 use of a particular parcel.

17 (b) Effect of prior qualification.--An organization  
18 possessing a valid exemption from the tax imposed by Article II  
19 of the Tax Reform Code, pursuant to an administrative or  
20 judicial determination that the organization qualifies for  
21 exemption under section 204(10) of the Tax Reform Code, shall be  
22 presumed to meet the criteria contained in section 5(b), (c),  
23 (d), (e) and (f), and any person challenging such presumption  
24 before any agency or court shall bear the burden of proving the  
25 contrary. Any person challenging such presumption may request  
26 from the institution all relevant financial statements, records  
27 and documents used to obtain the exemption under section 204(10)  
28 of the Tax Reform Code. Failure by the institution to supply  
29 such information within 30 days shall remove the presumption  
30 with respect to that challenge.

1 (c) Applicability of presumption.--The provisions of this  
2 section shall apply only to sales and use tax exemptions granted  
3 or renewed on or after the effective date of this act.

4 Section 7. Existing agreements.

5 Nothing in this act shall be construed to affect, impair,  
6 terminate or supersede any contract, agreement or arrangement in  
7 effect on or before the effective date of this act which  
8 authorizes or requires payment of taxes, amounts in lieu of  
9 taxes, or other charges or fees for the services of a political  
10 subdivision of this Commonwealth. Further, nothing in this act  
11 shall be construed to impair, or otherwise inhibit, the right or  
12 ability of any institution or political subdivision to enter  
13 into such agreements after the effective date of this act.

14 Section 8. Unfair competition with small businesses.

15 (a) Intent.--It is the policy of this act that institutions  
16 of purely public charity shall not use their tax-exempt status  
17 to compete unfairly with small business.

18 (b) Rule.--An institution of purely public charity may not  
19 fund, capitalize, guarantee the indebtedness of, lease  
20 obligations of, or subsidize a commercial business that is  
21 unrelated to the institution's charitable purpose as stated in  
22 the institution's charter or governing legal documents.

23 (c) Exceptions.--Institutions of purely public charity are  
24 not in violation of subsection (b) if any of the following  
25 apply:

26 (1) The commercial business is intended only for the use  
27 of its employees, staff, alumni, faculty, members, students,  
28 clients, volunteers, patients or residents. For purposes of  
29 this paragraph, a person shall not be considered an employee,  
30 staff, member, alumnus, faculty, student, client, volunteer,

1 patient or resident if the person's only relationship with  
2 the institution is to receive products or services resulting  
3 from the commercial business.

4 (2) The commercial business results in sales to the  
5 general public that are incidental or periodic rather than  
6 permanent and ongoing.

7 (d) Support for other charities.--Nothing in this section  
8 shall be construed as prohibiting or limiting the ability of an  
9 institution of purely public charity to fund, capitalize,  
10 guarantee the indebtedness of or otherwise subsidize another  
11 institution of purely public charity.

12 (e) Investments.--An institution of purely public charity  
13 that invests in publicly traded stocks and bonds; real estate;  
14 or other investments is not in violation of subsection (b).

15 (f) Educational functions.--An institution of purely public  
16 charity that uses its facilities to host groups for educational  
17 purposes only is not in violation of subsection (b).

18 (g) Government functions.--An institution of purely public  
19 charity may engage in a new commercial business that may  
20 otherwise be in violation of subsection (b) if the institution  
21 is formally requested to do so by the Commonwealth or a  
22 political subdivision.

23 (h) Existing arrangements.--An institution of purely public  
24 charity that prior to the effective date of this act funded,  
25 capitalized, guaranteed the indebtedness of, leased obligations  
26 of or subsidized a commercial business may continue to own and  
27 operate such businesses without violating subsection (b) as long  
28 as the institution does not substantially expand the scope of  
29 the commercial business. In the event an injunction is issued  
30 under subsection (i), the effect of such injunction shall be

1 limited to restraining the substantial expansion of the scope of  
2 the commercial business which was initiated after the effective  
3 date of this act.

4 (i) Remedies.--Whenever the Attorney General receives a  
5 complaint from an aggrieved small business or has reason to  
6 believe that any institution of purely public charity is  
7 violating this section and the proceedings would be in the  
8 public interest, the Attorney General may bring an action in the  
9 name of the Commonwealth against that institution to restrain  
10 such violation by temporary or permanent injunction. The  
11 Attorney General must either bring an action or issue a written  
12 determination to the aggrieved small business within 120 days of  
13 the filing of a complaint.

14 (1) If the Attorney General fails to bring an action or  
15 to issue a written determination to a small business  
16 complainant within 120 days of the filing of a complaint, the  
17 small business may petition the Commonwealth Court for a writ  
18 of mandamus ordering the Attorney General either to bring an  
19 action under this section or to provide the reason or reasons  
20 why the Attorney General has declined to do so.

21 (2) Nothing in this subsection shall preclude either an  
22 aggrieved small business or an institution of purely public  
23 charity that has been affected by a decision of the Attorney  
24 General from pursuing an appeal of that decision under 2  
25 Pa.C.S. Ch. 7 Subch. A (relating to judicial review of  
26 Commonwealth agency action).

27 Section 9. Accountability and disclosure.

28 (a) Intent.--An institution which qualifies for tax  
29 exemptions by virtue of being designated an institution of  
30 purely public charity has a unique responsibility to

1 periodically demonstrate to the public that it is fulfilling the  
2 purpose for which the exemption is granted. The citizens of this  
3 Commonwealth expect an organization which is granted tax  
4 exemption to adhere to a high standard of accountability and  
5 public disclosure. Therefore, the institution should make an  
6 annual report in which it makes available certain information  
7 about its organization and its charitable activities. The report  
8 should be made consistent with the desire of the General  
9 Assembly to avoid burdensome reporting requirements which unduly  
10 distract the organization from its charitable purposes.

11 (b) Report required.--It shall be the duty of the president,  
12 chairman or principal officer of an institution which files, or  
13 is required to file, an annual return with the Internal Revenue  
14 Service under the Internal Revenue Code of 1986 (Public Law 99-  
15 514, 26 U.S.C. § 1 et seq.) to file a report with the bureau no  
16 later than the date, including any extensions granted by the  
17 Internal Revenue Service, the institution files or is required  
18 to file an annual return with the Internal Revenue Service. The  
19 following information shall be included in the report required  
20 by this section and shall be in a format approved by the  
21 Secretary of the Commonwealth:

22 (1) A copy of the annual return filed or required to be  
23 filed with the Internal Revenue Service.

24 (2) The date the institution was incorporated and a  
25 reference to any determination of its tax-exempt status under  
26 the Internal Revenue Code of 1986, including, if applicable,  
27 its Internal Revenue tax exemption number and the tax-exempt  
28 purposes as established by the Internal Revenue Service.

29 (3) The following information on each affiliate of the  
30 institution of purely public charity:

1 (i) The name and type of organization.

2 (ii) Whether the affiliate is organized on a for-  
3 profit or nonprofit basis.

4 (iii) The relationship of each affiliate to the  
5 institution making the report.

6 (4) The institution's relationship with any other  
7 nonprofit corporation or unincorporated association if the  
8 relationship involves formal governance or the sharing of  
9 revenue.

10 (c) Amendments to annual returns.--It shall be the duty of  
11 the president, chairman or principal officer of any institution  
12 which files an amended annual return with the Internal Revenue  
13 Service to file a copy of the amended annual return with the  
14 bureau within ten days of its filing with the Internal Revenue  
15 Service.

16 (d) Exemption from filing.--

17 (1) An institution which is not required to file an  
18 annual return with the Internal Revenue Service shall be  
19 exempt from the requirements of this section.

20 (2) An institution which files a consolidated annual  
21 return with the Internal Revenue Service shall not be  
22 required to file any report except as otherwise required by  
23 this subsection. The institution shall file with the bureau a  
24 statement giving the name and tax-exempt number of the  
25 organization filing the consolidated annual return.

26 (e) Paperwork reduction.--The Secretary of the Commonwealth  
27 shall implement procedures and may modify the reporting  
28 requirements of this section in order to reduce or eliminate  
29 duplicate filing by institutions subject to this section. The  
30 Secretary of the Commonwealth shall allow the president,

1 chairman or principal officer of an institution subject to this  
2 section to substitute the registration statement required under  
3 section 5 of the act of December 19, 1990 (P.L.1200, No.202),  
4 known as the Solicitation of Funds for Charitable Purposes Act,  
5 for those portions of the report required under subsection (b)  
6 which duplicate the information required under section 5 of the  
7 Solicitation of Funds for Charitable Purposes Act. The Secretary  
8 of the Commonwealth shall allow the institution to certify that  
9 the information required in subsection (b)(2), (3) or (4) has  
10 not changed since the prior report in lieu of providing the same  
11 information in the report required by subsection (b). The  
12 Secretary of the Commonwealth may obtain from the Internal  
13 Revenue Service copies of annual returns of institutions which  
14 file annual returns with the Internal Revenue Service on  
15 computer disk or other electronic or paper media.

16 (f) Retention of records.--The Secretary of the Commonwealth  
17 shall retain the reporting information required by this section  
18 for three years after the reports are required to be filed.

19 (g) Utilization of reports.--The Secretary of the  
20 Commonwealth shall make reports submitted under this section  
21 available for public inspection. The Secretary of the  
22 Commonwealth shall provide any government agency a copy of the  
23 report filed under this section upon request. Nothing in this  
24 subsection shall prevent a government agency from requiring any  
25 organization seeking exemption as an institution of purely  
26 public charity to provide the information described in  
27 subsection (b) to that agency as part of a determination of the  
28 tax exempt status of the institution.

29 (h) Definitions.--As used in this section, the following  
30 words and phrases shall have the meanings given to them in this

1 subsection:

2 "Affiliate." A domestic or foreign corporation, association,  
3 trust or other organization which owns a 10% or greater interest  
4 in the institution. A domestic or foreign corporation,  
5 association, trust or other organization in which the  
6 institution owns a 10% or greater interest.

7 "Annual return." The annual information return required to be  
8 filed with the Internal Revenue Service by organizations exempt  
9 from tax by virtue of section 501(a) of the Internal Revenue  
10 Code of 1986 (Public Law 99-514, 26 U.S.C. §1, et seq.). The  
11 annual information return consists of Internal Revenue Service  
12 Form 990 or Form 990EZ and Schedule A.

13 "Bureau." The Bureau of Charitable Organizations of the  
14 Department of State of the Commonwealth.

15 "Institution." A domestic or foreign nonprofit corporation,  
16 association, trust or other organization which qualifies as an  
17 institution of purely public charity under the provisions of  
18 this act and which receives or claims exemption from the real  
19 property tax imposed by any political subdivision in this  
20 Commonwealth or which receives or claims exemption from the tax  
21 imposed by Article II of the Tax Reform Code.

22 Section 10. Litigation reduction.

23 (a) Institutions.--An institution of purely public charity  
24 may bring an action against the challenging party or parties for  
25 recovery of reasonable litigation expenses and attorney fees on  
26 account of any challenge pertaining to the tax-exempt status of  
27 any property initiated within three years of the initiation of  
28 an earlier challenge involving, in any part, the same property  
29 if:

30 (1) the institution successfully defends its tax exempt



1 status as an institution of purely public charity in a court  
2 of common pleas, Commonwealth Court or the Pennsylvania  
3 Supreme Court; and

4 (2) appeals by the challenging party or parties are  
5 exhausted and there has been a final unappealed or  
6 unappealable adjudication or judgment.

7 (b) Government agencies.--A government agency may bring an  
8 action for recovery of reasonable litigation expenses and  
9 attorney fees on account of any application pertaining to the  
10 tax-exempt status of any property filed within three years of an  
11 earlier application involving, in any part, the same property  
12 against an organization claiming tax-exempt status as an  
13 institution of purely public charity if:

14 (1) the organization relies on section 5(d)(3) in  
15 claiming tax-exempt status as an institution of purely public  
16 charity;

17 (2) the organization is determined by a court of common  
18 pleas, Commonwealth Court or the Supreme Court not to meet  
19 the requirement in section 5(d) that it donate or render  
20 gratuitously a substantial portion of its services; and

21 (3) appeals by the organization are exhausted and there  
22 has been a final unappealed or unappealable adjudication or  
23 judgment.

24 Section 11. Repeals.

25 All acts and parts of acts are repealed insofar as they are  
26 inconsistent with this act except for section 204(a)(3) of the  
27 act of May 22, 1933 (P.L.853, No.155), known as The General  
28 County Assessment Law, as it applies to charitable organizations  
29 providing residential housing services.

30 Section 12. Applicability.

1       This act shall not apply to nor affect 40 Pa.C.S. § 6103 or  
2 6301 or the entities subject to those sections.

3 Section 13. Effective date.

4       This act shall take effect January 1, next following the date  
5 of final enactment.